

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARDUNIVERSITY OF SOUTHERN  
CALIFORNIA,

Opposer,

v.

UNIVERSITY OF SOUTH CAROLINA,

Applicant.

Opposition No. 91125615

Serial No. 75/358,031

Mark: SC (Stylized)

Filed: September 16, 1997

Published: May 18, 1999

**OPPOSER'S NOTICE OF RELIANCE NO. 27 UNDER 37 C.F.R. § 2.120(j) AND  
TBMP § 704.09 OFFERING INTO EVIDENCE DISCOVERY DEPOSITIONS**

Pursuant to 37 C.F.R. § 2.120(j) and TBMP § 704.09, Opposer, the University of Southern California, ("Opposer") submits this Notice of Reliance on additional discovery deposition testimony of Elizabeth A. Kennedy, which Opposer believes should be considered by the Board so as to clarify the record and make not misleading the testimony from Ms. Kennedy's deposition that was previously offered by Applicant, the University of South Carolina, ("Applicant") in Applicant's Notice of Reliance No. 26.

(4) If only part of a discovery deposition is submitted and made part of the record by a party, an adverse party may introduce under a notice of reliance any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by the submitting party.

37 C.F.R. § 2.120(j)(4).

Attached as Exhibits 425-428 are true and correct copies of the following portions from the discovery deposition of Elizabeth A. Kennedy, which supplement those portions previously offered by Applicant. An explanation as to why Opposer is relying in the additional testimony



follows. Accordingly, the requirements of 37 C.F.R. § 2.120(j) and TBMP § 704.09 are satisfied.


Opposer's Ex. No.	Description	Explanation of Relevance
425	Kennedy Discovery Depo. 99:4-101:12; 109:9-110:3; 117:1-14.	Applicant's Exhibit 411 is only part of a discussion of licensees that California has licensed to use California's baseball interlock on the goods at issue in this opposition. The full discussion makes clear that in addition to the entities identified in Exhibit 411, Nike and USC's own brand Team Trojan are licensed to use California's Baseball Interlock. The full discussion also makes clear that other entities (including at least K2 and Akseare) are licensed for that mark on other clothing-type items.
426	Kennedy Discovery Depo. 137:1-6; 139:3-140:3.	Applicant's Exhibit 418 suggests that cardinal and black are not ever permissible by California's licensees. Ms. Kennedy testified that black is frequently used as a neutral color in connection with cardinal and that any statement about cardinal and black alone would be a guideline rather than an express prohibition.
427	Kennedy Discovery Depo. 168:15-169:21 and Exhibit 23 thereto	Applicant's Exhibit 421 discusses the fact that Santa Clara University now apparently uses a form of "SC." The omitted testimony indicates that Ms. Kennedy learned about this development shortly before California sent a cease and desist letter and that Ms. Kennedy has not seen other evidence of such use.

Opposer's Ex. No.	Description	Explanation of Relevance
428	Kennedy Discovery Depo. 175:22-176:10; 195:3- 196:13.	Applicant's Exhibit 422 addresses the consent agreement between California and Spellman College. The additional testimony provides the witness's understanding of the relationship between the institutions, their respective marks, and their respective permitted uses of those marks under the consent agreement.

Dated: May 11, 2006

Respectfully submitted,

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CONFIDENTIAL DEPOSITION OF ELIZABETH A. KENNEDY

Los Angeles, California

Thursday, August 18, 2005

Volume

Reported by:

LINDA A. BANKEY

CSR No. 7993

JOB No. 913007

[Excerpt]

Opposition No. 91125615  
Univ. Southern California v.  
Univ. South Carolina

1

Esquire Deposition Services  
323.938.2461

Opposer's  
Ex. No. 425 Pg. No. 1.

1 A The purpose of this document is to advise  
2 interested parties in selecting or identifying  
3 companies who have licenses with the university.

01:04

4 Q Does this list include licensees that are  
5 using the SC interlock or baseball interlock  
6 trademarks?

7 A Yes.

8 Q Okay. Can you tell me which ones are doing  
9 it in connection with clothing first off?

01:04

10 A Clothing is Team Trojan and Nike, and for  
11 the baseball interlock, there are some additional  
12 licensees.

01:05

13 Q And who -- who can use the baseball  
14 interlock clothingwise? And let me also clarify  
15 that. Clothing and hats.

16 A Right. The baseball interlock would be used  
17 by New Era Cap, Headmaster <sup>(K2)</sup>, Nike, Dehen Jackets, Team  
18 MR. ADLER: You can take as much time --  
19 MR. McELWAIN: Yeah.  
20 MR. ADLER: -- as you need to look through  
21 the list.  
22 MR. McELWAIN: Please feel free.  
23 MR. ADLER: It's not a -- not a race.  
24 THE WITNESS: I believe Aksees Akseesare.  
25 It's spelled Akseesare, A-k-s-e-s-a-r-e.

01:05

01:05

1 BY MR. McELWAIN:

2 Q Well, that says "scarves," though, doesn't  
3 it?

4 A Right. I guess -- yeah, well, you could --  
01:06 5 I'm considering that clothing for the moment.

6 Q Okay.

7 A K2 also is sporting goods. So we could  
8 probably scratch K2 from my statement.

9 Q Yeah. I'm just curious about --

01:06 10 A Just clothing?

11 Q Yeah. How about this? T-shirts, baseball  
12 caps, shorts or baseball-type uniforms, sweatshirts.

13 A Certainly Nike. Certainly Team Trojan.  
14 Headmaster. ~~Top of the World.~~

01:06 15 MR. ADLER: You mentioned New Era before.  
16 Was that --

17 THE WITNESS: New Era.

18 BY MR. McELWAIN:

19 Q Right.

01:06 20 A Some styles from Zephyr Graf-x, and also  
21 former licensees have produced that mark on products  
22 from time to time.

23 I am assuming we're just speaking about  
24 current licensees?

01:07 25 Q Right.

1 A There may be a few more. I really need to  
2 go back and research exactly which of our clothing  
3 licensees have used the baseball interlocking SC.

01:07 4 In addition to that, I should mention that  
5 we differentiate between retail licensees and  
6 licensees that are listed here as being not for  
7 resale and internal campus only.

01:07 8 Conceivably most of those internal  
9 campus-only licensees would have the ability to  
10 reproduce that baseball interlock on clothing  
11 products, but they would be doing so solely for the  
12 institution itself, typically the Athletic Department.

01:08 13 Q Mr. Stimmler went through this and gave us a  
14 list of all of the non-clothing products that he  
15 thought use the letters "SC."

16 Would you think that your knowledge would be  
17 better than his, or would he have better knowledge  
18 than you about who is using the letters "SC" on  
19 products?

01:08 20 A I think my knowledge would probably be  
21 better than his --

22 Q Okay.

01:08 23 A -- because we work with this on a day-to-day  
24 basis. But that said, this list is not broken down  
25 by the marks to which these licensees have been



1 Q Right.

2 A -- in the past.

3 Q And perhaps Headmaster. You need to check.

4 A Correct.

01:30 5 Q And then for the SC interlock, it's  
6 Team Trojan and Nike.

7 A For clothing.

8 Q Right.

01:30 9 A Additionally, we have post-season NCAA  
10 licensees who have licenses to use any athletic mark.

11 Q Okay.

12 MR. ADLER: And to clarify, by "clothing,"  
13 you were talking about hats, T-shirts, shorts?  
14 Because scarves, for instance, was not clothing under  
01:30 15 that definition.

16 MR. McELWAIN: Right.

17 MR. ADLER: And there were various -- ties,  
18 for instance. We went through -- she identified a  
19 tie company --

01:31 20 MR. McELWAIN: Yeah.

21 MR. ADLER: -- and that's not clothing, is  
22 it?

23 MR. McELWAIN: I'm only asking about hats,  
24 T-shirts, shorts, sweatshirts, what you would  
01:31 25 typically find in, you know, an athletic-based

1 apparel section of a store.

2 THE WITNESS: Okay. Yeah, I gave you the  
3 master comprehensive list.

01:31 4 MR. McELWAIN: I think we're on the same  
5 sheet of music there unless anybody disagrees.

6 MR. ADLER: No, that's my understanding as  
7 to those specific groups.

8 MR. McELWAIN: Yeah.

01:31 9 MR. ADLER: But, again, there are -- you  
10 know, depending on how you call raincoats, and there  
11 are headbands, sweatbands.

12 MR. McELWAIN: Right.

13 MR. ADLER: It looked like there were some  
14 "SC" Nike or Team Trojan.

01:31 15 BY MR. McELWAIN:

16 Q Where are Team Trojan products sold?

17 A Team Trojan products are sold in the  
18 university's own retail operations, which would be  
19 the bookstore and its associated venues, and also I  
01:32 20 believe at Sport Chalet stores throughout Los Angeles.

21 MR. ADLER: Are you talking physical  
22 locations or --

23 MR. McELWAIN: Yes.

24 Q Are Team Trojan products sold to -- sold on  
01:32 25 a -- what's the word I'm looking for -- a wholesale

01:40 1 Q Okay. Why don't we go through this and try  
2 to be as accurate as you -- as you can as to who --  
3 the question will be specific -- who was licensed to  
4 sell clothing such as T-shirts, shorts, hats,  
5 baseball uniforms.

6 A Potentially New Era -- certainly New Era,  
7 Top of the World, Zephyr, Team Trojan and Nike. That  
8 would be -- that would be the list until I would have  
9 the opportunity to go back and --

01:41 10 Q Okay.

11 A -- go through our archives.

12 Q And was Nike ever licensed to use the  
13 baseball interlock?

14 A It has been.

01:41 15 Q Okay.

16 A Uh-huh.

17 Q And if we looked at the contracts in the  
18 1996-'97 time frame, we would be able to tell what  
19 retailers were selling those products as well?

01:41 20 A We may not have had the question posed as it  
21 is currently on our license agreement.

22 Q Okay.

23 A So we may or may not have that reflected in  
24 the contract.

01:42 25 Q But we know we can go back -- as far back as



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Esquire Deposition Services  
323.938.2461

Opposer's  
Ex. No. 426, Pg. No. 1.

1 Q But this sheet says that you cannot do that;  
2 correct?

3 A It does not expressly say that you cannot do  
4 that. This is merely meant to give a guidance to  
02:11 5 licensees in taking each mark and rendering it under  
6 some of the more common backgrounds.

7 Q The Athletic marks -- tell me what  
8 differentiates the Athletic marks from the other  
9 marks.

02:11 10 A Primarily the differentiation is -- is by  
11 the Athletic Department itself. They chose various  
12 marks, and their tradition is rooted in certain marks  
13 that have evolved over time. And this is a  
14 compilation of those.

02:12 15 Q So the first one is the SC interlock; is  
16 that correct?

17 A That's correct.

18 Q And that's used by the entire Athletic  
19 Program -- is that right -- except for the baseball  
02:12 20 team?

21 A Not entirely. Each team -- swimming, for  
22 example, uses -- uses USC I think more than the  
23 SC interlock. I mean, individual teams have some of  
24 their own preferences. But I would say that it's  
02:12 25 fair to say this is used by the entire Athletic

1 initially that these are not to be construed as a  
2 quantitative analysis of the situation.

02:14

3 Q If you'll look on page 2027, that has some  
4 color contrast rules, I guess, for lack of a better  
5 word.

6 Does that allow solely cardinal -- a  
7 cardinal "SC" to be used on a black background?

02:15

8 A I would not call these, first of all, rules.  
9 These are merely guidance for licensees to assist  
10 them again in developing color combinations that are  
11 the most commonly used background colors.

12 Q Have -- have you ever approved use of a  
13 cardinal "SC" on a black background?

02:15

14 A We most certainly have typically in  
15 conjunction with our gold color as well.

16 Q Okay. How about without the gold color?  
17 Just cardinal and black.

18 A Very rarely, if ever. I would have to  
19 really go through a lot of art files.

02:15

20 Q And is black a school color for the  
21 University of Southern California?

22 A It is not a school color, but it is used as  
23 a neutral color quite often.

02:16

24 Q Do you know whether any of the athletic  
25 teams have ever used black uniforms?

1 A I don't know definitively. I believe that  
2 perhaps the swim team has used black as, again, a  
3 neutral color.

02:16 4 Q Right. Flip ahead to -- to 2035,  
5 "Typography."

6 What is the importance of having a uniform  
7 typography?

02:17 8 A The importance in this manual is merely to  
9 reflect the two recommended type faces that the  
10 Bass/Yager & Associates design firm designated as  
11 part of the USC graphic identity system, and their  
12 rationale was rooted in giving a consistent look and  
13 feel to many of USC's communications.

02:17 14 Q Is that a guideline that you strictly  
15 follow?

02:17 16 A For academic system trademarks and  
17 communications, I think it is much more strictly  
18 followed than for products and athletic usages and  
19 spirit usages. It's really much more of a -- a tool  
20 for the academic system. I should say with the  
21 exception of full block, which is much more  
22 Spirit-oriented and is not part of the Bass/Yager  
23 system.

24 MR. ADLER: Can we take a quick break?

02:18 25 MR. McELWAIN: Yeah.





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Opposer's  
Ex. No. 427, Pg. No. 1.

1 Q An approximate date? Was it 1988 or the  
2 year 2005?

3 A Oh, no, much closer to 2005.

4 Q Okay. Would it have been -- or do you know  
03:01 5 whether that -- after you viewed the Santa Clara's  
6 use of the letters "SC," do you know whether a cease  
7 and desist letter went out?

8 A No, I don't believe a cease and desist  
9 letter went out at that -- at that outset, no.

03:01 10 MR. McELWAIN: Okay. Mark this as 23.  
11 (Applicant's Exhibit 23 was marked for  
12 identification by the court reporter.)  
13 (Discussion off the record.)

14 BY MR. McELWAIN:

03:02 15 Q We have just marked the cease and desist  
16 letter as Exhibit 23.

17 Are you familiar with that cease and desist  
18 letter, Ms. Kennedy?

19 A Yes.

03:02 20 Q Does looking at the date of that refresh  
21 your memory as to maybe when you first saw the photos  
22 of Santa Clara's products?

23 A No, it does not.

24 Q Okay. And what's the date on that letter?

03:02 25 A January 3rd, 2005, this year.

↑

1 Q So it would have been before the cease and  
2 desist letter went out; right?

3 A It would have been, yes.

03:03

4 Q Okay. Do you know when Santa Clara began  
5 use of the letters "SC" in that format?

6 A I do not.

7 Q Are you aware of any instances of confusion  
8 between Santa Clara's use of the letters "SC" and  
9 Southern California's "SC" trademarks?

03:03

10 A By "instances of confusion," are you  
11 referring to retail stores who potentially might  
12 carry both products? That sort of thing? Or --

13 Q No, actual confusion where a customer has  
14 thought they purchased a Southern California hat when  
15 it, in fact, was a Santa Clara hat.

03:03

16 A I had never seen, for example, fans at one  
17 of our football games wearing a hat such as this one.

18 Q Do you feel that the letters "SC" on the  
19 Santa Clara hat are similar to the SC interlock used  
20 by the University of Southern California?

03:03

21 A I think they are potentially similar, yes.

22 MR. McELWAIN: Would you mark that as 24.

23 (Applicant's Exhibit 24 was marked for  
24 identification by the court reporter.)

03:04

25 MR. McELWAIN: And this is Exhibit 25.

## GIBSON, DUNN &amp; CRUTCHER LLP

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Delt(s) \_\_\_\_\_ Plf(s) \_\_\_\_\_ EXHIBIT for I.D.

LINDA A. BANKEY, CSR # 7993

Date: 8-16-05

Witness: Kennedy

(23.2)

Re: Application to Register "SC" Trademark

Dear Mr. Schneck:

We represent the University of Southern California ("USC" or the "University"). USC takes great pride in its reputation for being a top-rate university and a leader in Southern California, the nation, and the world. USC owns numerous federally registered trademarks including the marks SC® (word mark) and SC® (stylized) (Registration Nos. 1,844,953 and 2,683,137) among many others (collectively the "USC Trademarks"). USC has continuously used the USC Trademarks in connection with the University's educational services, athletic events, and related services and merchandise for decades. As a result of USC's worldwide activities and reputation for providing superior products and services, USC has built up valuable goodwill in the USC Trademarks that it vigorously protects.

One of the most famous marks in USC's extensive trademark portfolio is SC®. The SC® mark is part of USC's athletic collection of marks, used to identify merchandise developed through the USC Athletic Department. The mark captures the USC Trojan spirit, pride and competitiveness that have been a part of the long-standing legacy of USC's athletic tradition. Indeed, SC® is part of the official identity of the USC athletic programs, and is used in conjunction with all sports teams at the University. Merchandise is sold nationwide under the SC® mark and includes a wide-variety of apparel (such as shirts, jackets, and hats), pins, ties, umbrellas, and paper goods, as well as numerous other products.

LOS ANGELES NEW YORK WASHINGTON, D.C. SAN FRANCISCO PALO ALTO  
LONDON PARIS MUNICH BRUSSELS ORANGE COUNTY CENTURY CITY DALLAS DENVEROpposition No. 91125615  
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23.2

GIBSON, DUNN & CRUTCHER LLP

Thomas Schneck Jr., Esq.  
January 3, 2005  
Page 2

USC's common law rights in the SC® mark are extensive, and they are bolstered by USC's federal registrations for the SC® mark. Registration No. 1,844,953 provides particularly broad protection, as it is a word mark registration that covers USC's current stylizations and any likely other form of "SC" stylization.

It has recently come to our attention that you filed two federal trademark applications on or about November 11, 2004 on behalf of Santa Clara University ("SCU") to register the mark "SC" for "Apparel, namely hats" application Serial Nos. 78/515415 and 78/515435. Those applications are currently pending and have not yet been approved for publication by the United States Patent and Trademark Office.

The mark for which SCU has applied is virtually identical to USC's registered SC® marks, with a near identity in sound, appearance, and connotation between your mark and USC's marks. In addition, the merchandise SCU offers or intends to offer in connection with the "SC" mark is identical to the type of merchandise that USC and its authorized licensees regularly offer in connection with the USC Trademarks. As a result, ordinary consumers could well assume the marks and their sponsors are affiliated because of the identity in name.

It is to avoid any such unnecessary confusion and any unnecessary litigation over the same that we must respectfully request that SCU (1) voluntarily abandon the "SC" trademark applications; (2) begin steps to phase out any use of the "SC" mark that would be confusingly similar to USC's established trademarks for the products described in your application or for any other products or services offer by USC under its SC® trademarks; and (3) provide adequate written assurances that SCU will not use the any confusingly similar "SC" trademark in the future.

USC has incurred substantial time and expense in creating the SC® trademarks and in establishing goodwill therein. Consequently, we have been instructed to continue to monitor your activities and take any actions necessary to protect our client's marks. In that regard, I look forward to speaking with you about the resolution of this matter. I can be reached at (213) 229-7919, or you can e-mail me at [madler@gibsondunn.com](mailto:madler@gibsondunn.com).

We sincerely hope an amicable and satisfactory arrangement can be reached promptly. I look forward to hearing from you.

Best regards,

*Michael Adler* /MAB

Michael S. Adler

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Opposer's  
Ex. No. 427, Pg. No. 5

23.3



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Opposer's  
Ex. No. 428, Pg. No. 1.



1 telephone call to your counsel, and I just wanted to  
2 find out what the result of that telephone conference  
3 was.

03:18 4 A Right. Our counsel spoke to Santa Clara  
5 about the -- the option of a license, and that's  
6 still on the table.

7 Q Okay.

8 A And if, you know, it proceeds -- if  
9 Santa Clara continues to proceed, USC is likely to  
03:19 10 oppose.

11 Q Okay. Would you consider suing them for  
12 trademark infringement?

13 A We --

14 MR. ADLER: Objection to the extent it calls  
03:19 15 for attorney-client or -- or attorney work product or  
16 speculation.

17 MR. McELWAIN: Are you instructing her not  
18 to answer?

19 MR. ADLER: Yeah, I think I am. I'm  
03:19 20 instructing her not to answer.

21 MR. McELWAIN: Okay.

22 Q Are you aware of a college called  
23 "Spelman College"?

24 A I am.

03:19 25 Q Tell me what you know about the relationship

1 or the dealings between University of  
2 Southern California and Spelman college.

03:19 3 A When back in 1990 University of  
4 Southern California sought to register the letters  
5 "SC," Spelman College filed an extension of time for  
6 that -- when that mark was published, and we  
7 proceeded to negotiate a settlement with them so that  
8 we could mutually use the marks that we both wanted  
9 to register and felt they were sufficiently  
03:20 10 differentiated.

11 Q Were you involved in those negotiations?

12 A Not directly.

13 Q Okay. But you have educated yourself on  
14 that?

03:20 15 A Yes.

16 MR. ADLER: And just to clarify, when the  
17 witness said, "Not directly," were you at the school?

18 THE WITNESS: I was at the school. I was  
19 not negotiating.

03:20 20 MR. ADLER: That was counsel?

21 THE WITNESS: Our counsel was negotiating --  
22 our counsel and Spelman College's counsel were  
23 negotiating.

24 MR. ADLER: But counsel was reporting back,  
03:20 25 in part, to you?

1 to help us ascertain that.

2 BY MR. McELWAIN:

3 Q That doesn't answer my question, though.

4 If Southern California had agreed to allow  
03:52 5 Spelman College to use its "SC schoolhouse design" on  
6 typical college bookstore merchandise, which it did,  
7 and if typical college bookstore merchandise is  
8 clothing, wouldn't that statement in paragraph 7 be  
9 incorrect?

03:52 10 MR. ADLER: The same objections. It calls  
11 for a legal conclusion. It's an incomplete  
12 hypothetical.

13 THE WITNESS: It doesn't definitively say  
14 that it would.

03:52 15 BY MR. McELWAIN:

16 Q Okay. What do you know about Spelman  
17 College?

18 A I understand that it's a small NCAA --  
19 currently NCAA Division 3 institution based in  
03:53 20 Atlanta, I believe.

21 Q Do you know whether they have a baseball  
22 team?

23 A I do not.

24 Q Do you know whether they have a football  
03:53 25 team?

1 A I do not. But I do know that they are a  
2 Division 3 institution, which means they do not grant  
3 college scholarships or athletic scholarships.

03:53 4 Q You then state that Spelman College's goods  
5 and services would carry a highly distinctive mark.

6 That's where you had asked for the context.

7 What did you mean by "highly distinctive  
8 mark" in paragraph 8?

03:53 9 A That the mark with the schoolhouse design  
10 would be significantly differentiated and specific to  
11 Spelman College, that the establishment of the little  
12 triangle above the stylized "S" and "C" would be very  
13 differentiating.

03:54 14 Q In paragraph 10, you state that you are  
15 particularly familiar with the color schemes used by  
16 Carolina.

17 Why is it that you are more familiar with  
18 Carolina than another institution?

03:54 19 A I believe it says I am particularly familiar  
20 or generally familiar with the color schemes used by  
21 various other Division 1 universities such as  
22 Carolina.

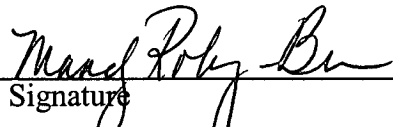
03:54 23 I -- as a participant in Division 1 athletic  
24 licensing, we generally have a fairly good working  
25 knowledge of which institutions use generally what

Opposition No. 91125615

**CERTIFICATE OF MAILING 37 CFR. §1.10**

I, Mandy Robertson-Bora, hereby certify that I am depositing the foregoing **OPPOSER'S NOTICE OF RELIANCE NO. 27 UNDER 37 C.F.R. § 2.120(j) AND TBMP § 704.09 OFFERING INTO EVIDENCE DISCOVERY DEPOSITIONS** with the United States Postal Service as Express Mail, postage pre-paid, on May 11, 2006, in an envelope addressed to

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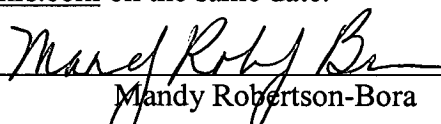
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Attorneys for Applicant University of South Carolina

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\_\_\_\_\_  
Mandy Robertson-Bora